



NEWS RELEASE

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State Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters

With a goal of making legal help more accessible to the public, the Washington Supreme Court has adopted APR 28, entitled “Limited Practice Rule for Limited License Technicians”. The rule will allow non-lawyers with certain levels of training to provide technical help on simple legal matters effective September 1, 2012.

The rule was approved by a majority of the Court, with Justices Charles W. Johnson, Susan J. Owens and Mary E. Fairhurst dissenting. A copy of both the final order and the dissent can be found online at www.courts.wa.gov together with the text of the new rule.

“This new rule serves as an important first step to assist the thousands of unrepresented individuals seeking to resolve important civil legal matters each day in our courts,” said Chief Justice Barbara Madsen of the new rule. “With our civil legal aid system overtaxed and underfunded, this is one strategy the Court believes can help assist those who find themselves in court, yet are unable to afford an attorney.”

The rule was recommended by the Practice of Law Board, created by the Supreme Court in 2001 to investigate unauthorized practice of law complaints, issue advisory opinions and recommend ways to the Court in which non-lawyers can improve access to law-related services. The proposal was first submitted to the Court in 2008 and revised in 2012.

Under the new rule, persons who are trained and authorized by a newly-established Limited License Legal Technician Board will be able to provide technical help to the public on civil cases.

The type of assistance the legal technician will be able to provide include, but are not limited to:

- Selecting and completing court forms;
- Informing clients of applicable procedures and timelines;
- Reviewing and explaining pleadings and;
- Identifying additional documents that may be needed in a court proceeding.

Under the rule, limited license legal technicians will not be able to represent clients in court, or contact and negotiate with opposing parties on a client's behalf.

The rule also requires continuing education requirements, annual proof of financial responsibility and an annual license fee to be established by the Practice of Law Board and approved by the Supreme Court.

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THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW)
APR 28—LIMITED PRACTICE RULE FOR)
LIMITED LICENSE LEGAL TECHNICIANS)
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ORDER

NO. 25700-A-1005

The Practice of Law Board having recommended the adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, and the Court having considered the revised rule and comments submitted thereto, and having determined by majority that the rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

That we adopt APR 28, the Limited Practice Rule for Limited License Legal Technicians. It is time. Since this rule was submitted to the Court by the Practice of Law Board in 2008, and revised in 2012, we have reviewed many comments both in support and in opposition to the proposal to establish a limited form of legal practitioner. During this time, we have also witnessed the wide and ever-growing gap in necessary legal and law related services for low and moderate income persons.

We commend the Practice of Law Board for reaching out to a wide spectrum of affected organizations and interests and for revising the rule to address meritorious concerns and suggestions. We also thank the many individuals and organizations whose suggestions to the language of the rule have improved it. The Limited License Legal Technician Rule that we adopt today is narrowly tailored to accomplish its stated objectives, includes appropriate training,

CLERK

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY RONALD R. CARPENTER

financial responsibility, regulatory oversight and accountability systems, and incorporates ethical and other requirements designed to ensure competency within the narrow spectrum of the services that Limited License Legal Technicians will be allowed to provide. In adopting this rule we are acutely aware of the unregulated activities of many untrained, unsupervised legal practitioners who daily do harm to “clients” and to the public’s interest in having high quality civil legal services provided by qualified practitioners.

The practice of law is a professional calling that requires competence, experience, accountability and oversight. Legal License Legal Technicians are not lawyers. They are prohibited from engaging in most activities that lawyers have been trained to provide. They are, under the rule adopted today, authorized to engage in very discrete, limited scope and limited function activities. Many individuals will need far more help than the limited scope of law related activities that a limited license legal technician will be able to offer. These people must still seek help from an attorney. But there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the Practice of Law Board. This assistance should be available and affordable. Our system of justice requires it.

I. The Rule

Consistent with GR 25 (the Supreme Court rule establishing the Practice of Law Board),¹ the rule² establishes a framework for the licensing and regulation of non-attorneys to engage in discrete activities that currently fall within the definition of the “practice of law” (as defined by GR 24)³ and which are currently subject to exclusive regulation and oversight by this Court. The rule itself authorizes no one to practice. It simply establishes the regulatory framework for the

¹ http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr25

² <http://www.wsba.org/Lawyers/groups/practiceoflaw/2006currentruledraftfinal3.doc>

³ http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr24

consideration of proposals to allow non-attorneys to practice. As required by GR 25, the rule establishes certification requirements (age, education, experience, pro bono service, examination, etc.),⁴ defines the specific types of activities that a limited license legal technician would be authorized to engage in,⁵ the circumstances under which the limited license legal technician would be allowed to engage in authorized activities (office location, personal services required, contract for services with appropriate disclosures, prohibitions on serving individuals who require services beyond the scope of authority of the limited license legal technician to perform),⁶ a detailed list of prohibitions,⁷ and continuing certification and financial responsibility requirements.⁸

In addition to the rule, we are today acting on the Practice of Law Board's proposal to establish a Limited License Legal Technician Board.⁹ This Board will have responsibility for considering and making recommendations to the Supreme Court with respect to specific proposals for the authorization of limited license legal technicians to engage in some or all of the activities authorized under the Limited License Legal Technician Rule, and authority to oversee the activities of and discipline certified limited license legal technicians in the same way the Washington State Bar Association does with respect to attorneys. The Board is authorized to recommend that limited license legal technicians be authorized to engage in specific activities within the framework of – and limited to – those set forth in the rule itself. We reserve the responsibility to review and approve any proposal to authorize limited license legal technicians

⁴ Exhibit A to January 7, 2008 submission from the Practice of Law Board to the Supreme Court, Proposed APR 28(C) (*hereafter* Proposed APR 28).

⁵ APR 28(D)

⁶ APR 28(E)

⁷ APR 28(F)

⁸ APR 28(G) and (H)

⁹ Exhibit B to January 7, 2008 submission from the Practice of Law Board to the Supreme Court (*hereafter* Regulations)

to engage in specific activities within specific substantive areas of legal and law related practice, and our review is guided by the criteria outlined in GR 25.

Today we adopt that portion of the Practice of Law Board's proposal which authorizes limited license legal technicians who meet the education, application and other requirements of the rule be authorized to provide limited legal and law related services to members of the public as authorized by this rule.¹⁰

II. The Need for a Limited License Legal Technician Rule

Our adversarial civil legal system is complex. It is unaffordable not only to low income people but, as the 2003 Civil Legal Needs Study documented, moderate income people as well (defined as families with incomes between 200% and 400% of the Federal Poverty Level).¹¹ One example of the need for this rule is in the area of family relations which are governed by a myriad of statutes. Decisions relating to changes in family status (divorce, child residential placement, child support, etc.) fall within the exclusive province of our court system. Legal practice is required to conform to specific statewide and local procedures, and practitioners are required to use standard forms developed at both the statewide and local levels. Every day across this state, thousands of unrepresented (pro se) individuals seek to resolve important legal matters in our courts. Many of these are low income people who seek but cannot obtain help from an overtaxed, underfunded civil legal aid system. Many others are moderate income people for whom existing market rates for legal services are cost-prohibitive and who, unfortunately, must search for alternatives in the unregulated marketplace.

Recognizing the difficulties that a ballooning population of unrepresented litigants has created, court managers, legal aid programs and others have embraced a range of strategies to

¹⁰ Exhibit E to January 7, 2008 submission from the Practice of Law Board to the Supreme Court (Family Law Subcommittee Recommendation as adopted by the Full Practice of Law Board)

provide greater levels of assistance to these unrepresented litigants. Innovations include the establishment of courthouse facilitators in most counties, establishment of courthouse-based self-help resource centers in some counties, establishment of neighborhood legal clinics and other volunteer-based advice and consultation programs, and the creation of a statewide legal aid self-help website. As reflected most recently in a study conducted by the Washington Center for Court Research,¹² some of these innovations – most particularly the creation of courthouse facilitators – have provided some level of increased meaningful support for pro se litigants.

But there are significant limitations in these services and large gaps in the type of services for pro se litigants. Courthouse facilitators serve the courts, not individual litigants. They may not provide individualized legal advice to family law litigants. They are not subject to confidentiality requirements essential to the practitioner/client relationship. They are strictly limited to engaging in “basic services” defined by GR 27.¹³ They have no specific educational/certification requirements, and often find themselves providing assistance to two sides in contested cases. Web-based self-help materials are useful to a point, but many litigants require additional one-on-one help to understand their specific legal rights and prerogatives and make decisions that are best for them under the circumstances.

From the perspective of pro se litigants, the gap places many of these litigants at a substantial legal disadvantage and, for increasing numbers, forces them to seek help from unregulated, untrained, unsupervised “practitioners.” We have a duty to ensure that the public

¹¹ Washington Supreme Court Task Force on Civil Equal Justice Funding, *Civil Legal Needs Study* at 23 (fig. 1), <http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>

¹² George, Thomas, Wang, Wei, Washington’s Courthouse Facilitator Programs for Self-Represented Litigants in Family Law Cases (Washington State Center for Court Research, March 2008) <http://www.courts.wa.gov/wscrr/docs/Courthouse%20Facilitator%20Program.pdf#xml=http://206.194.185.202/texis/search/pdfhi.txt?query=center+for+court+research&pr=www&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&cq=&id=480afa0a11>

¹³ http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr27

can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.

III. Specific Concerns and Responses

A number of specific issues that have been raised both in support of and in opposition to this rule deserve additional discussion and response.

Proponents have suggested that the establishment and licensing of limited license legal technicians should be a primary strategy to close the Justice Gap for low and moderate income people with family related legal problems. While there will be some benefit to pro se litigants in need of limited levels of legal help, we must be careful not to create expectations that adoption of this rule is not intended to achieve.

By design, limited license legal technicians authorized to engage in discrete legal and law related activities will not be able to meet that portion of the public's need for help in family law matters that requires the provision of individualized legal representation in complex, contested family law matters. Such representation requires the informed professional assistance of attorneys who have met the educational and related requirements necessary to practice law in Washington. Limited purpose practitioners, no matter how well trained within a discrete subject matter, will not have the breadth of substantive legal knowledge or requisite practice skills to apply professional judgment in a manner that can be consistently counted upon to meet the public's need for competent and skilled legal representation in complex legal cases.

On the other hand, and depending upon how it is implemented, the authorization for limited license legal technicians to engage in certain limited legal and law related activities holds promise to help reduce the level of unmet need for low and moderate income people who have relatively uncomplicated family related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome.

Some opposing the rule believe that limited licensing legal technicians to engage in certain family related legal and law related activities poses a threat to the practicing family law bar.

First, the basis of any regulatory scheme, including our exercise of the exclusive authority to determine who can practice law in this state and under what circumstances, must start and end with the public interest; and any regulatory scheme must be designed to ensure that those who provide legal and law related services have the education, knowledge, skills and abilities to do so. Protecting the monopoly status of attorneys in any practice area is not a legitimate objective.

It is important to observe that members of the family law bar provide high levels of public and pro bono service. In fact, it is fair to say that the demands of pro bono have fallen disproportionately on members of the family law bar. As pointed out in the comments to the Practice of Law Board's proposal, young lawyers and others have been working for years to develop strategies to provide reduced fee services to moderate income clients who cannot afford market-rate legal help. Over the past year, these efforts have been transformed into the Washington State Bar Association's newly established Moderate Means program,¹⁴ an initiative which holds substantial promise to deliver greater access to legal representation for greater numbers of individuals between 200% and 400% of the federal poverty guideline being provided services at affordable rates.

In considering the impact that the limited licensing of legal technicians might have on the practicing family law bar it is important to push past the rhetoric and focus on what limited license legal technicians will be allowed to do, and what they cannot do under the rule. With

¹⁴ <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program>

limited exception,¹⁵ few private attorneys make a living exclusively providing technical legal help to persons in simple family law matters. Most family law attorneys represent clients on matters that require extended levels of personalized legal counsel, advice and representation – including, where necessary, appearing in court – in cases that involve children and/or property.

Stand-alone limited license legal technicians are just what they are described to be – persons who have been trained and authorized to provide technical help (selecting and completing forms, informing clients of applicable procedures and timelines, reviewing and explaining pleadings, identifying additional documents that may be needed, etc.) to clients with fairly simple legal law matters. Under the rule we adopt today, limited license legal technicians would not be able to represent clients in court or contact and negotiate with opposing parties on a client's behalf. For these reasons, the limited licensing of legal technicians is unlikely to have any appreciable impact on attorney practice.

The Practice of Law Board and other proponents argue that the limited licensing of legal technicians will provide a substantially more affordable product than that which is available from attorneys, and that this will make legal help more accessible to the public. Opponents argue that it will be economically impossible for limited license legal technicians to deliver services at less cost than attorneys and thus, there is no market advantage to be achieved by creating this form of limited practitioner.

No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a

¹⁵ See, e.g., the All Washington Legal Clinic (<http://www.divorcelowcostwa.com>)

market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it.

That said, if market economies can be achieved, the public will have a source of relatively affordable technical legal help with uncomplicated legal matters. This may reduce some of the demand on our state's civil legal aid and pro bono systems and should lead to an increase in the quality and consistency of paperwork presented by pro se litigants.

Further, it may be that non-profit organizations that provide social services with a family law component (e.g., domestic violence shelters; pro bono programs; specialized legal aid programs) will elect to add limited license legal technicians onto their staffs. The cost would be much less than adding an attorney and could enable these programs to add a dimension to their services that will allow for the limited provision of individualized legal help on many cases — especially those involving domestic violence. Relationships might be extended with traditional legal aid programs or private pro bono attorneys so that there might be sufficient attorney supervision of the activities of the limited license legal technicians to enable them to engage in those activities for which “direct and active” attorney supervision is required under the rule.

Some have suggested that there is no need for this rule at all, and that the WSBA's Moderate Means Program will solve the problem that the limited licensing of legal technicians is intended to address. This is highly unlikely. First, there are large rural areas throughout the state where there are few attorneys. In these areas, many attorneys are barely able to scrape by. Doing reduced fee work through the Moderate Means program (like doing pro bono work) will not be a high priority.

Second, limited licensing of legal technicians *complements*, rather than competes with, the efforts WSBA is undertaking through the Moderate Means program. We know that there is a huge need for representation in contested cases where court appearances are required. We know

further that pro se litigants are at a decided disadvantage in such cases, especially when the adverse party is represented.¹⁶ Limited license legal technicians are not permitted to provide this level of assistance; they are limited to performing mostly ministerial technical/legal functions. Given the spectrum of unmet legal needs out there, Moderate Means attorneys will be asked to focus their energy on providing the help that is needed most – representing low and moderate income people who cannot secure necessary representation in contested, often complex legal proceedings.

Opponents of the rule argue that the limited licensing of legal technicians presents a threat to clients and the public. To the contrary, the authorization to establish, regulate and oversee the limited practice of legal technicians within the framework of the rule adopted today will serve the public interest and protect the public. The threat of consumer abuse already exists and is, unfortunately, widespread. There are far too many unlicensed, unregulated and unscrupulous “practitioners” preying on those who need legal help but cannot afford an attorney. Establishing a rule for the application, regulation, oversight and discipline of non-attorney practitioners establishes a regulatory framework that reduces the risk that members of the public will fall victim to those who are currently filling the gap in affordable legal services.

Unlike those operating in the unregulated marketplace, limited license legal technicians will practice within a carefully crafted regulatory framework that incorporates a range of safeguards necessary to protect the public. The educational requirements are rigorous. Unlike attorneys, legal technicians are required to demonstrate financial responsibility in ways established by the Board. There is a testing requirement to demonstrate professional competency

¹⁶ See, e.g., *In re the Marriage of King*, 162 Wn.2d 378, 404-411 (2007) (Madsen, J., dissenting).

to practice, contracting and disclosure requirements are significant, and there will be a robust oversight and disciplinary process. This rule protects the public.

Another concern that has been raised is that attorneys will be called upon to underwrite the costs of regulating non-attorney limited license legal technicians against whom they are now in competition for market share. This will not happen. GR 25 requires that any recommendation to authorize the limited practice of law by non-attorneys demonstrate that “[t]he costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime.” The Practice of Law Board’s rule expressly provides that the ongoing cost of regulation will be borne by the limited license legal technicians themselves, and will be collected through licensing and examination fees. Experience with the Limited Practice Board demonstrates that a self-sustaining system of regulation can be created and sustained. The Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership.

IV. Conclusion

Today’s adoption of APR 28 is a good start. The licensing of limited license legal technicians will not close the Justice Gap identified in the 2003 Civil Legal Needs Study. Nor will it solve the access to justice crisis for moderate income individuals with legal needs. But it is a limited, narrowly tailored strategy designed to expand the provision of legal and law related services to members of the public in need of individualized legal assistance with non-complex legal problems.

The Limited License Legal Technician Rule is thoughtful and measured. It offers ample protection for members of the public who will purchase or receive services from limited license legal technicians. It offers a sound opportunity to determine whether and, if so, to what degree

the involvement of effectively trained, licensed and regulated non-attorneys may help expand access to necessary legal help in ways that serve the justice system and protect the public.

IT IS FURTHER ORDERED:

- (1) That a new rule, APR 28, as attached hereto is adopted.
- (2) That the new rule will be published in the Washington Reports and will become effective September 1, 2012.

DATED at Olympia, Washington this 15th day of June, 2012.

Madsen, C. J.

Chambers, J.
J. M. Johnson
Wiggin, J.

Stymus, J.
Gonzalez, J.

New Admission to Practice Rule 28: Limited Practice Rule for
Limited License Legal Technicians

- A) **Purpose.** The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.
- B) **Definitions.** For purposes of this rule, the following definitions will apply:
- 1) "APR" means the Supreme Court's Admission to Practice Rules.
 - 2) "Board" when used alone means the Limited License Legal Technician Board.
 - 3) "Lawyer" means a person licensed and eligible to practice law in any U.S. jurisdiction.
 - 4) "Limited License Legal Technician" means a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.
 - 5) "Paralegal/legal assistant" means a person qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive law-related work for which a lawyer is responsible.
 - 6) "Reviewed and approved by a Washington lawyer" means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer's signature and bar number.
 - 7) "Substantive law-related work" means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.
 - 8) "Supervised" means a lawyer personally directs, approves and has responsibility

for work performed by the Limited License Legal Technician.

9) "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus member of the Washington State Bar Association.

10) Words of authority:

- a) "May" means "has discretion to," "has a right to," or "is permitted to".
- b) "Must" or "shall" mean "is required to."
- c) "Should" means recommended but not required.

C) Limited License Legal Technician Board.

- 1) *Establishment.* There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be non-lawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.
- 2) *Board Responsibilities.* The Board shall be responsible for the following:
 - (a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;
 - (b) Processing applications and fees, and screening applicants;
 - (c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney-client privilege, procedural rules and substantive law issues related to one or more approved practice areas;
 - (d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;
 - (e) Approving education and experience requirements for licensure in approved practice areas;
 - (f) Establishing and over-seeing committees and tenure of members;
 - (g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme

Court as are necessary to carry out the duties and responsibilities of the Board; and

(h) Such other activities and functions as are expressly provided for in this rule.

3) *Rules and Regulations.* The Board shall propose rules and regulations for adoption by the Supreme Court that:

(a) Establish procedures for grievances and disciplinary proceedings;

(b) Establish trust account requirements and procedures;

(c) Establish rules of professional and ethical conduct; and

(d) Implement the other provisions of this rule.

D) **Requirements for Applicants.** An applicant for licensure as a Limited License Legal Technician shall:

1) *Age.* Be at least 18 years of age.

2) *Moral Character and Fitness to Practice.* Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.

3) *Education and Experience.* Have the following education and experience:

a) (i) An associate degree or equivalent program, or a bachelor degree, in paralegal/legal assistant studies approved by the American Bar Association or the Board, together with a minimum of two years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; or

(ii) A post-baccalaureate certificate program in paralegal/legal assistant studies approved by the Board, together with a minimum of three years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; and

b) Complete at least 20 hours of pro bono legal service in Washington as approved by the Board, within two years prior to taking the Limited License Legal Technician examination.

In all cases, the paralegal/legal assistant experience must be acquired after completing the education requirement, unless waived by the Board for good cause shown.

- 4) *Application*. Execute under oath and file with the Board two copies of his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application may be grounds for denial of the application.
- 5) *Examination Fee*. Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

E) Licensing Requirements. In order to be licensed as a Limited License Legal Technician, all applicants must:

- 1) *Examination*. Take and pass the examinations required under these rules;
- 2) *Annual License Fee*. Pay the annual license fee;
- 3) *Financial Responsibility*. Show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and
- 4) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

F) Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

- 1) Obtain relevant facts, and explain the relevancy of such information to the client;
- 2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- 3) Inform the client of applicable procedures for proper service of process and filing of legal documents;
- 4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;
- 5) Review documents or exhibits that the client has received from the opposing

side, and explain them to the client;

- 6) Select and complete forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;
- 7) Perform legal research and draft legal letters and pleadings documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;
- 8) Advise a client as to other documents that may be necessary to the client's case (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case;
- 9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

G) Conditions Under Which A Limited License Legal Technician May Provide Services.

- 1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;
- 2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a non-licensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;
- 3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician that includes the following provisions:
 - (a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);
 - (b) Identification of all fees and costs to be charged to the client for the services to be performed;

- (c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;
 - (d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the ~~face~~ first page of the contract in minimum twelve-point bold type print;
 - (e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;
 - (f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and
 - (g) Any other conditions required by the rules and regulations of the Board.
- 4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client requires should seek the services of a lawyer.
 - 5) A document prepared by an LLLT shall include the LLLT's name, signature and license number beneath the signature of the client.
- H) **Prohibited Acts.** In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:
- 1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;
 - 2) Retain any fees or costs for services not performed;
 - 3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client; or
 - 4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized

by the license held by the Limited License Legal Technician;

- 5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;
- 6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party; unless permitted by GR 24(b).
- 7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client.
- 8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;
- 9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

I) Continuing Licensing Requirements.

- 1) *Continuing Education Requirements.* Each Limited License Legal Technician annually must complete the Board-approved number of credit hours in courses or activities approved by the Board; provided that the Limited License Legal Technician shall not be required to comply with this subsection during the calendar year in which he or she is initially licensed.
- 2) *Financial Responsibility.* Each Limited License Legal Technician shall annually provide proof of financial responsibility in such form and in such amount as the Board may by regulation prescribe.
- 3) *Annual Fee.* Each Limited License Legal Technician shall pay the annual license fee established by the Board and approved by the Supreme Court.

J) Existing Law Unchanged. This rule shall in no way modify existing law prohibiting non-lawyers from practicing law or giving legal advice other than as authorized under this rule or associated rules and regulations.

K) Professional Responsibility and Limited License Legal Technician-Client Relationship.

- 1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.
- 2) Limited License Legal Technicians shall be held to the ethical standards of the

Limited License Legal Technicians' Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW)
APR 28—LIMITED PRACTICE RULE FOR LEGAL)
TECHNICIANS AND NEW APR 28—NON-)
LAWYER PRACTICE COMMISSION)
REGULATIONS 1-7)

No. 25700-A-
DISSENT TO ORDER

OWENS, J. (dissenting)—During my years on the Washington Supreme Court, I have not once authored a dissent to an administrative order of this court. I depart from that custom today because I have very strong feelings that our court's decision to adopt the new Admission to Practice Rule, APR 28, is ill-considered, incorrect, and most of all extremely unfair to the members of the Washington State Bar Association (WSBA).

Let me quickly add that by expressing disagreement with the court's approval of this new rule, I am not suggesting that the legal needs of all persons in this state are currently being met. Like my judicial colleagues, I know that there is a great unmet need for legal services and we in the judiciary and the legal profession have an obligation to look for appropriate ways to expand the availability of legal assistance to the public.

My opposition to the board's work product should, therefore, not be considered disagreement with the goal the Practice of Law Board was seeking to achieve—expanding the availability of legal services to individuals who are confronted with legal problems. Rather, my opposition to the rule is based on the fact this rule and its attendant regulations impose an obligation on the members of the WSBA to underwrite the considerable cost of establishing and maintaining what can only be characterized as a mini bar association within the present WSBA. Assuming our court has the inherent

authority to create this new profession of legal technicians, I do not believe that we possess the authority to tax the lawyers of this state to pay "all of the expenses reasonably and necessarily incurred" by the Non-Lawyer Practice Commission, a body which comes into being pursuant to the rule and regulations. See Regulation 3(G). Pertinent to this point, I note that it is generally acknowledged that it will likely cost several hundred thousand dollars to set up the commission that will oversee this new profession of legal technicians. We have not been informed that the WSBA presently has sufficient money within its treasury to underwrite this considerable expense and I have significant doubts that it has an abundance of cash on hand. In fact, in light of the dues rollback, the opposite is true. Although I recognize that this court's order delays implementation of the new rule until January 1, 2013, I think it is unrealistic to assume that the WSBA will realize any large windfall of funds in 2013. Consequently, the only way the WSBA will be able to fulfill the considerable financial obligation this court has imposed upon it is to either reduce the amount it budgets for the programs and services it presently supports or increase the yearly dues of its members. Either way you look at it, this court is imposing a tax on lawyers.

The APR 28 regulations suggest that the APR 28 program will eventually support itself through certification fees. In that regard, we have been advised that something in the order of \$200,000 may eventually be generated by these fees. In this day and age, \$200,000 does not go very far and it is hard for me to see how this APR 28 program with its testing, certification, continuing education, and discipline provisions can be accommodated with a yearly budget of that amount. The hoped for self-sufficiency of the program will, in my view, depend to a large extent on the numbers of persons

achieving legal technician status under the rule. Although this court was earlier led to believe that initially there would be certification of legal technicians only in family law matters, the rule and regulations this court has approved provide the Practice of Law Board with unbridled discretion to recommend to the Supreme Court the areas, within the full range of practice areas encompassed by the GR 24 definition of the practice of law, in which legal technicians can practice.¹ I sense that the Practice of Law Board realized that there is uncertainty about whether the certification fees will produce sufficient funds to underwrite the annual cost of the legal technician program and, thus, provided that funding for the commission will be generated by certification fees “as well as commitments from the WSBA.” Regulation 3(G).²

The unfairness of imposing what seems beyond doubt a significant obligation on the lawyers of this state is made all the more manifest by the fact that in recent years, the WSBA has undertaken, with the encouragement of this court, a number of efforts designed to address the very problems the new APR 28 purports to mitigate. I am speaking of (1) increased encouragement for Washington lawyers to provide pro-bono service and the provision of free and low cost training for lawyers who wish to provide such service; (2) the highly successful home foreclosure legal aid project, which helps low and moderate income persons deal with the threat of home foreclosure; (3) a major

¹The court’s order contains a statement that “we adopt the portion of the Practice of Law Board’s proposal which authorizes legal technicians . . . to provide limited legal and law related services to members of the public in certain defined family law related areas. It is noteworthy that the proposed rule, APR 28, and regulations do not contain the words “family law.”

²The court’s order expresses confidence that the fee based system will be “cost neutral.” Perhaps it will be self-sufficient someday, but this conclusion does not address the significant start up costs which the court order requires the WSBA to pay.

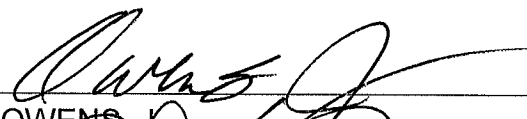
one-time contribution by the WSBA of cash to the Legal Foundation of Washington in order to offset the impact of reduced Interest on Lawyers Trust Accounts revenues coming to the foundation, a contribution which leveraged a \$3 million donation from the Gates Foundation to the Legal Foundation of Washington; (4) the statewide moderate means program, which is designed to assist individuals who need the assistance of a lawyer to obtain those services at a reduced cost; and (5) a check off on the annual license fee for lawyers, suggesting an annual contribution of at least \$50 by lawyers to the Campaign for Equal Justice to help ensure equal access to justice for all Washingtonians regardless of financial standing.

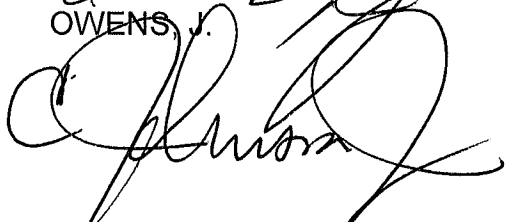
The WSBA is not required to undertake any of the aforementioned initiatives but it has done so voluntarily with great zeal and enthusiasm endeavoring to address the public's legal needs. Furthermore, all of this was done at great expense to the WSBA. Indeed the WSBA's contribution of \$1.5 million to the Legal Foundation of Washington in 2009 was a truly heroic gesture but one which made a major dent in the cash reserves the WSBA had built up over the years. Whether the obligation this court is now imposing on the WSBA will result in eliminating or curtailing any of these programs and initiatives, no one knows for certain. If, however, that is the result of our action, it would be a sad day for the WSBA and the many persons positively affected by the bar's considerable efforts.

Finally, I wish to observe that an impartial observer might wonder why the Supreme Court does not assume responsibility for funding implementation of APR 28. After all, the fact that the legal needs of the public are not being met is a problem that affects the entire community, not just a segment of our state's population like its

attorneys at law. Such a question would not be farfetched because in a number of states the expense associated with the admission and disciplining of lawyers is subsumed within the budget of the highest court in those states. I suspect, though, that if this court had been asked to assume financial responsibility for establishing and administering this major program for certification of legal technicians, with the vague promise that the program may someday be self-supporting, we would have concluded that we presently do not have sufficient funds within our budget with which to undertake this responsibility. Is it fair or equitable for this court to eschew assuming financial responsibility for the program in this time of economic distress, and instead impose the obligation on all of the state's lawyers, many of whom are feeling adverse affects of the current downturn of the economy? I say no. Because the majority by its order says yes, I dissent from the order.

DATED at Olympia, Washington this ^{4th} ~~14~~ day of ~~June~~ 2012.



OWENS, J.


I concur in result only.
Fairhurst, J.